

EXPLANATORY MEMORANDUM TO
THE CIVIL AVIATION (PROVISION OF INFORMATION TO PASSENGERS)
REGULATIONS 2006

2006 No. 3303

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations create offences for failure to comply with requirements that air passengers must be informed of the identity of the airline with which they are travelling and offered a right of reimbursement or re-routing if the airline is subject to an operating ban.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These Regulations serve to enforce in the United Kingdom the obligations in respect of the identity of air carrier which are set out in Chapter III of Council Regulation (EC) No.2111/2005 ("the EC Regulation"). Chapter III has had direct effect in Member States since it entered into force on 16 July 2006, but Article 13 requires that Member States should ensure compliance with the rules set out in Chapter III and lay down effective, proportionate and dissuasive penalties for their infringement. This must be done by 16 January 2007.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective of Chapter III of the EC Regulation is to ensure that air passengers receive the necessary information to make informed choices about the air carriers with which they travel. There had previously been no legal right for the passenger to be informed of the identity of the airline performing the service which they had booked.

7.2 The EC Regulation requires that passengers should be informed of the identity of the operating air carrier upon making a reservation or, if that is not yet known, of its likely identity. Passengers should also be informed as soon as possible of any changes to the carrier which will operate the flight.

7.3 The EC Regulation also requires passengers to be offered, in certain circumstances, the right to reimbursement or re-routing if the operating air carrier is replaced by another carrier which is on the list of airlines which are banned from operating in the Community on safety grounds, and this results in the cancellation of the flight. A similar requirement applies in the case of flights outside the Community, where a blacklisted carrier is to operate a flight in place of the intended carrier, and as a result a passenger chooses not to take the flight.

7.4 The Government supports the objective of ensuring that air passengers are better informed about the identity of the carrier operating their flight and are accordingly able to make informed choices about their journeys.

7.5 The Civil Aviation Authority ("the CAA") published guidance for the industry in April 2006 on the requirements of the EC Regulation, which it also publicises on its website. The CAA has agreed to the Department's request to oversee the enforcement of the new requirements; its approach will in the first instance be to seek by persuasion to ensure that air carriage contractors discharge their obligations to passengers in accordance with the provisions of Chapter III of the EC Regulation. When this approach is unable to achieve compliance the CAA will consider prosecution in accordance with its prosecution policy.

7.6 In July 2006 the Department began a twelve-week consultation on the proposed approach to enforcement in the United Kingdom of Chapter III of the EC Regulation with representatives of the air transport and travel industry. Sixteen organisations and companies were consulted, covering the travel agent, tour operator and airline sectors, as well as consumer organisations; the proposals were also publicised on the Department's website. Comments were submitted by nine of these, plus one other organisation. A seminar with industry representatives, of whom nine attended, drawn from all of the sectors listed above, was held in October 2006 to discuss issues arising from the consultation.

7.7 There was a general consensus that the Department's proposals were acceptable. Several of those consulted expressed support for the first of the two options set out in the Department's partial Regulatory Impact Assessment, the making of a Statutory Instrument to lay down penalties for offences while leaving the industry to devise its own measures and systems to ensure compliance. There was no support for the alternative option, of devising and imposing a prescriptive, detailed regime specifying the measures which must be taken by the relevant sectors of the industry to ensure compliance. A number of responses made the point that procedures were already in place to ensure their compliance with the new requirements, and that they had not experienced problems in meeting their obligations; nor had there been passenger complaints on this issue. Although there would be some additional costs, the financial implications were not considered to be severe, although no detailed figures were provided to support this view; only one respondent suggested that would be significant costs in certain limited circumstances.

7.8 Individual stakeholders did, however, raise detailed matters of concern. Two stakeholders expressed concern about the creation of criminal offences and the proposed level of fines in the draft instrument, which they suggested were disproportionate given the nature of the offences and the degree of loss or harm to the passenger which would result. The Department's view is that a system of criminal offences and penalties is the appropriate mechanism to ensure universal coverage of organisations which will be subject to the UK Regulations and to impose penalties which are effective, proportionate and dissuasive. Alternative options are i) using the air carrier licensing or air travel organiser licensing arrangements or ii) establishing a regime of civil penalties.

7.9 The first option would not cover all of the firms subject to these Regulations and it would also be disproportionate to put a company out of business by removing its licence because of an offence under them. As regards option ii), the CAA, which will enforce the requirements, has no generic power to impose civil financial penalties. While it would be possible to establish a bespoke system of civil financial penalties for the specific offences under these Regulations using powers in the European Communities Act 1972, the Department's view is that this would be a disproportionately complex method of implementation. Establishing criminal offences and penalties also follows the approach used in The Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 (the DBC regulations) which are also concerned with the rights of airline passengers.

7.10 The Department has, however, accepted the point about the proposed level of fines, and has reduced the maximum fine from Level 5 to Level 3 on the standard scale for most offences created by the Instrument. The fine for failure to offer re-routing or reimbursement has, however, been maintained at Level 5 in order to ensure consistency with penalties for offences of a similar nature created by the DBC regulations.

8. Impact

8.1 A full Regulatory Impact Assessment is attached to this memorandum.

9. Contact

9.1 Phil Cotterell at the Department for Transport, Tel: 020 7944 8706 or e-mail: phil.cotterell@dft.gsi.gov.uk, can answer any queries regarding the instrument.

Department for Transport

Final Regulatory Impact Assessment

Title of proposal

1. The Civil Aviation (Provision of Information to Passengers) Regulations 2006.

Purpose and intended effect

Objective

2. To enforce in the United Kingdom compliance by the airline and travel industry with the requirements of Chapter III of Regulation (EC) 2111/2005 ("the EC Regulation"). This seeks to ensure that airline passengers are informed of the identity of the air carrier which will operate a flight on which they are booked.

Background

3. Chapter III of the EC Regulation requires an air carriage contractor¹ to inform the passenger of the identity of the operating air carrier or carriers, on making a reservation or, if the identity of the carrier is not known at that time, as soon as possible thereafter. Any change in the operating carrier must be notified to the passenger as soon as possible, and in all cases at check-in.
4. It also requires passengers to be offered the right to reimbursement or re-routing in certain circumstances if the notified carrier is replaced by one which is on the list of carriers banned from operating in the European Community on safety grounds.
5. The previous European rules governing the provision of information to air passengers did not ensure that passengers will be told the name of the operating carrier in all circumstances. There was therefore a risk that passengers would find themselves on carriers with whom they would not otherwise have chosen to fly, for whatever reason. Providing consumers with more information about their prospective flight is also in line with the Government's aim that air travellers should be well informed prior to travel.
6. The EC Regulation is directly applicable in all Member States and its main requirements came into effect on 16 July 2006. Article 13 of the EC Regulation requires all Member States, by 16 January 2007, to ensure compliance with these rules and to lay down effective, proportionate and dissuasive penalties for their infringement. This RIA and the associated UK regulations are solely concerned with the arrangements for enforcing compliance with the EC regulation.
7. The UK Regulations will establish offences for non-compliance with the provisions of Chapter III. On summary conviction for an offence relating to the failure to provide information to passengers, an air carriage contractor (including an air carrier, tour operator or ticket seller) will be liable on conviction to a fine of up to Level 3 on the

¹ "Air carriage contractor" means the carrier that concludes a carriage of contract with a passenger or, where the contract comprises a package, the tour operator. Any ticket seller shall also be deemed an air carriage contractor.

standard scale (currently £1,000). The penalty for non-compliance with the requirements on the right to reimbursement or re-routing will be a fine of up to Level 5 on the standard scale (currently £5,000). This more severe penalty is consistent with penalties for similar offences under the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005.

Rationale for Government intervention

8. Article 13 of the EC Regulation introduces a legal requirement for Member States to lay down penalties for infringement of Chapter III. Therefore taking no action is not an option. Failure to act would also mean that the Civil Aviation Authority ("the CAA"), which will enforce the Regulations in the UK, would effectively have no power to ensure compliance by airlines, travel agents and tour operators.

Consultation

9. In considering the Commission's original proposal for a draft Regulation, in 2005 the Department for Transport ("DfT") consulted airlines, travel agents and tour operators, together with the CAA and the Air Transport Users Council, which represents the interests of air passengers. Among the ten responses, there was majority support for the principle that passengers should be informed of the identity of the operating carrier, although some respondents raised concerns about the financial and operational implications for the industry of implementing the requirements.
10. Starting in July 2006, DfT has carried out a further consultation with a similar cross-section of the industry on the enforcement of Chapter III of the EC Regulation, including draft UK Regulations. There was a general consensus that the Department's proposals were acceptable, subject to the CAA enforcing the Regulation fairly, and some detailed matters of concern were raised by individual respondents. The proposed approach set out in Option a) below, which has been proposed in a partial RIA, won support from a number of stakeholders, none advocating the alternative option. Many respondents noted that existing practices or other EC or UK regulations already meant that passengers would be informed if the identity of their air carrier changed between reservation and the actual flight.
11. In responding to the consultation, the Department decided to reduce the proposed maximum level of fines for some offences, from level 5 on the standard scale to level 3. This recognised that little harm or loss to passengers would result from failure to comply with the requirements, as while non-compliance would result in a failure to inform the passenger of a change to their air carrier, that carrier will not be on the banned list and will therefore be deemed safe to fly on.
12. Little financial information about the costs of different approaches to compliance was provided. Respondents thought that there would be some financial implications from implementing the main requirements of the EC Regulation, these were not considered to be severe, although no detailed figures were provided to support this view; only one respondent suggested that there would be significant costs in certain limited circumstances.
13. A full analysis of the responses to the consultation exercise is available in the Aviation section of the DfT website (www.dft.gov.uk).

Options

14. As explained above, in view of the legal requirement for EU Member states to lay down penalties for non-compliance with Chapter III of the EC Regulation, taking no action is not an option. In line with the Government's better regulation agenda, DfT has considered whether there are alternatives to the proposed criminal offences and penalties to secure compliance and meet the UK's obligations. On balance it considers that the alternatives – enforcing compliance using air carrier or travel organiser licensing arrangements or establishing a regime of civil penalties would not be practical, effective or proportionate. The first would not cover all of the firms subject to the Regulation and it could be considered disproportionate to put a company out of business and make its staff unemployed because of this offence. In relation to the second the CAA does not currently have any powers to impose civil financial penalties for any purpose and such a regime would require primary legislation. The Government does not consider it proportionate to introduce such a regime to enforce these obligations. While it would be possible to establish a bespoke system of civil financial penalties for the specific offences under these Regulations using powers in the European Communities Act 1972, the Department's view is that this would be a disproportionately complex method of implementation.
15. There are therefore two options available to the Secretary of State in order to secure the enforcement of Chapter III:
 - a) make a Statutory Instrument which meets the requirements of Article 13 of Chapter III of the EC Regulation, and creates offences in UK law for failure to comply with the obligations imposed by Article 11;
 - b) make a Statutory Instrument as at option a) above, and in parallel draw up a comprehensive regime which specifies in detail the actions which air carriage contractors should take in order to comply with Chapter III of the EC Regulation.
16. *Option a) would meet the requirements of Chapter III of the EC Regulation, and would leave the industry discretion to develop its own procedures to ensure that its members comply with the requirements of the EC Regulation in respect of the provision of information to passengers.*
17. Option b) would also comply with the requirements of Chapter III of the EC Regulation. It would however generate a large administrative burden as it would require the detailed specification of appropriate actions to be taken by all the relevant sectors of the industry, such as airlines, tour operators and travel agents.

Costs and Benefits

Sectors and groups affected

18. The following sectors and groups will be affected:
 - Businesses (airlines, travel agents and tour operators)
 - Air passengers
 - Government and public sector agencies (DfT and Civil Aviation Authority).

Race Impact

19. This policy has been assessed for race relevance; a Race Impact Assessment is not required.

Analysis of the costs and benefits

Option a) - costs and benefits

20. Option a) will benefit passengers by increasing the information available to them when making their travel decisions, thereby making it easier for them to travel with a carrier of their choice. It will also go some way to ensuring that any change of carrier is notified at an early stage, thereby reducing the incidence of difficulties arising at airports when passengers learn of a change of carrier immediately before travel. Providing consumers with more information about their prospective flight, particularly if the actual carrier is not the one originally indicated at the time of reservation, is in line with the Government's aim that air travellers should be well informed prior to travel.
21. Under option a), the measured approach which is proposed for enforcement of the EC Regulation should ensure that requirements placed on airlines, travel agents and tour operators by the general approach are workable and reasonable. Each of the above groups will need to devise its own solution to ensure compliance which should ensure that cost-effective measures are put in place, and in some cases little if any change to existing procedures will be necessary. For example in the case of holders of Air Travel Organisers Licences, their licence terms have for some considerable time required tour operators to advise customers of the identity of the operating carrier. Scheduled airlines also have arrangements in place to keep passengers informed of changes in air carriers following the initial reservation.
22. Option a) may nevertheless generate start-up costs for some sectors of the industry in setting appropriate measures to ensure compliance are in place, but these should be considered against the higher ongoing costs of the greater burdens of implementation which would result from option b). Consultation on costs for has failed to generate a meaningful estimate of implementation costs under option a); respondents have described them as "minimal" and "small", and talked of "little if any additional costs or processes". One stakeholder suggested possible indicative costs to the tour management tasks of up to £5 million "if starting afresh to the task", but acknowledged that many companies would already have relevant systems in place.
23. There will also be potential burdens for the industry arising from the right of passengers to reimbursement or re-routing if the notified carrier is entered on the Community list and subject to an operating ban which results in the cancellation of the flight, or would have done so if the flight had been operated in the Community. The carefully targeted approach to placing carriers on the Community list is expected to result in such burdens arising only infrequently.
24. We do not foresee any environmental benefits or disbenefits arising from option a).

Option b) - costs and benefits

25. Option b) will generate identical benefits for passengers to those identified for option a) in paragraph 20.

26. Option b) would also generate start-up costs for the industry in devising and putting in place measures to ensure compliance with the requirements of the passenger information provisions of the EC Regulation. The potential costs for some sectors of the industry if option b) were to be accepted could be significantly higher, if the processes and procedures which are adopted prove to be significantly different from those previously employed, for example by ATOL holders, to advise the consumer of the identity of the operating carrier. Option b) might also be expected to result in a more unwieldy system which would in turn generate significantly higher compliance costs for all sectors of the industry.
27. Option b) implies a more proactive role for the CAA in enforcing the EC Regulation, with commensurately higher costs. It would also impose additional costs for DfT and the CAA in devising a comprehensive enforcement regime for use by the industry, and bureaucratic expenditure for all parties in discussing and seeking to agree the detail of that regime.
28. Option b) will also result in for burdens for the industry arising from the right of passengers to reimbursement or re-routing, similar to those identified for option a) in paragraph 23.
29. We do not foresee any environmental benefits or disbenefits arising from option b).

Small firms impact test

30. The requirement to inform passengers is intended to fall upon air carriage contractors as specifically defined in the EC Regulation. The definition includes ticket sellers who arrange a contract of carriage with a passenger whether for a flight only or as part of a package. Such organisations are a mixture of large or medium-sized firms and some small companies. We do not expect impacts of the UK regulation to be large in any case, nor to have a significantly greater impact on small businesses. Such businesses in particular might be expected to adopt best practice as recommended by trade associations to ensure compliance, rather than incurring expenditure to devise their own solutions.

Competition assessment

31. The airline, tour operator and travel agent sectors are all characterised by a small number of large players with significant market share. The latter two sectors, however, also accommodate a larger number of small independent firms operating in local markets. Implementation of the UK Regulation is not anticipated to have an impact sufficient to result in a shift in market share or otherwise alter the characteristics of the market. It is a relatively minor measure which, as indicated above, is considered unlikely to have a disproportionate impact on small firms, and will not penalise new firms entering the market or restrict the products and services which firms can provide. We have therefore concluded that it will have little or no effect on competition, and representations received from the industry in response to consultation did not raise this as an issue.

Enforcement, sanctions and monitoring

32. DfT has delegated responsibility for the enforcement of, and compliance with the air carrier identity requirements to the CAA, which already operates in the area of

passenger protection. The CAA will also act as the body to which passengers should direct any complaints for investigation and possible enforcement action.

33. The CAA has publicised the new requirements on its website, and published guidance for airlines, travel agents and tour operators in April 2006; it remains in close and regular contact with the relevant sectors of the industry.
34. Initial indications are that compliance with the new requirements since they came into force in July 2006 has caused little difficulty to the industry, with no complaints on this issue having been received from the public to date. In the event of its receiving complaints, the CAA will engage with the air carriage contractor concerned and make reasonable efforts to secure compliance with the EC Regulation. If an air carriage contractor appears to be flagrantly or systematically failing to comply with Chapter III of the EC Regulation and has failed to comply after suitable requests from the CAA, then the CAA will consider instituting legal proceedings.
35. In the light of the industry's assurances that it is essentially compliant with the requirements of Chapter III, the absence of complaints from passengers and the CAA's proposed measured approach to enforcement, it is not anticipated that the enforcement regime will impose any significant additional administrative costs on the industry.

Implementation and delivery plan

36. The Department will use the associated draft UK regulations to implement the compliance approach outlined above.
37. The intention is for the UK regulations to come into effect on 16 January 2007, as required by the EC regulations. This will ensure the UK meets its obligations under EU law.
38. The EC regulations that set out the obligations of airlines, tour operators and others in informing passengers of the identity of air carriers for flights they have booked came into force on 16 July 2006. The CAA agreed to enforce the obligations in the UK in March 2006. As the UK regulations are solely concerned with a compliance regime for the EC regulation and impose no direct additional requirements on businesses, a 12 week implementation period is not necessary.
39. The organisations consulted and the CAA will be sent copies of the UK regulations, this RIA and a summary of response to the consultation when the regulations are laid before Parliament in December 2006.

Post-implementation review

40. As part of their Memorandum of Understanding, DfT and the CAA have agreed that Twelve months after the EC Regulation enters into force (and at mutually agreed intervals thereafter) both parties will review the implementation and enforcement of the identity of air carrier requirements. In addition to considering possible changes to the enforcement regime, the findings may also be used to inform the European Commission's review of the EC Regulation, which is due to report in January 2009; the report will be accompanied where necessary by proposals for the amendment of the Regulation.

Summary and recommendation

41. *We believe that the airline and travel industry is best placed to define the procedures and actions which need to be put in place to ensure compliance with Chapter III of the EC Regulation. A more prescriptive regime seems likely to generate avoidable additional costs, and would also be contrary to the Government's preferred proportionate approach to regulation, and the industry has also indicated that its preference is for such an approach.*
42. Our intention is accordingly to proceed with **option a)**, as it does not impose burdens on industry which are unworkable or overly burdensome.

Summary costs and benefits table

Option	Costs - economic, environmental & social	Benefits - economic, environmental & social
a) Introduce UK enforcement regime, supported by criminal sanctions for non-compliance.	<p>Could result in costs for industry resulting from setting up systems to ensure compliance, staff training and ongoing costs of compliance, although in many cases existing procedures adequate to ensure compliance. These costs were not quantified in response to the DfT consultation.</p> <p>Possible costs from reimbursement or re-routing of passengers, but likely to occur infrequently.</p> <p>Limited costs, principally for DfT, in establishing enforcement regime and for CAA in undertaking enforcement role.</p>	<p>Would help ensure that passengers are well-informed about the identity of the airline with which they are flying and are offered reimbursement or re-routing in appropriate circumstances.</p> <p>Would enable the CAA to take action against a company disregarding its obligations under the EC Regulation.</p> <p>Would comply with the UK's obligation to lay down sanctions for infringement of the EC Regulations.</p>
b) Introduce UK enforcement regime, supported by criminal sanctions for non-compliance and a range of prescriptive measures to be adopted by the industry to ensure compliance.	<p>As above, but potentially significantly higher costs for industry if new regime requires changes from existing systems.</p> <p>Slightly higher administrative costs for DfT, CAA and industry in devising new range of measures and potentially higher ongoing costs of</p>	<p>As above, but should deliver a marginally greater assurance of compliance by the industry.</p>

	implementation. Implies more active role and hence higher costs for CAA in policing the system.	
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Declaration and publication

43. *I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.*

Signed G. Merron

Date 12th December 2006

Gillian Merron
Parliamentary Under Secretary of State
Department for Transport

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